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Office of General Counsel

July 25, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
Washington D.C. 20554

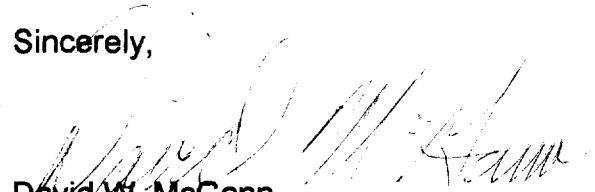
Re: In the Matter of Petition for Commission
Assumption of Jurisdiction of Low Tech Designs,
Inc.'s Petition for Arbitration with Ameritech Illinois
Before the Illinois Commission
CC. Docket No. 97-163

Dear Mr. Caton:

Enclosed please find for filing with the Commission an original and four (4)
copies of the Response of the Illinois Commerce Commission.

Please acknowledge receipt of this filing by date-stamping and returning the
enclosed duplicate copy of this letter in envelope provided.

Sincerely,


David W. McGann
Special Assistant Attorney General
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-3305

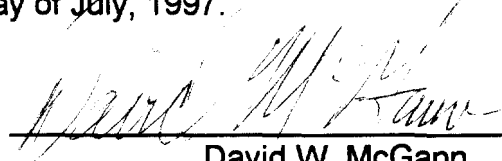
Counsel for the
Illinois Commerce Commission

DWM/tmv
Encls.

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CERTIFICATE OF SERVICE

I, David W. McGann, an attorney, hereby certify that copies of the Response of the Illinois Commerce Commission in Federal Communications Commission Docket Number 97-163, were served upon the persons on the attached Service List, by overnight mail, postage prepaid, on this 25th day of July, 1997.



David W. McGann

DWM/tmv

Service List
FCC Docket No. 97-163
July 25, 1997
DWM/GDR

Chairman Reed Hundt
Federal Comm. Comm.
1919 M. St., N.W./Room 814
Washington D.C. 20554

Comm. Susan Ness
Federal Comm. Comm.
1919 M. St., N.W./Room 832
Washington D.C. 20554

Louise A. Sunderland
Ameritech Illinois
225 W. Randolph St./27B
Chicago, Illinois 60606

International
Transcription Service
1231 20th St., N.W.
Washington, DC 20036

Comm. James Quello
Federal Comm. Comm.
1919 M. St., N.W./Room 802
Washington D.C. 20554

Mr. Richard Welch, Bill Kehoe
and Janice Myles
FCC CCB
1919 M. St., Room 544
Washington D.C. 20554

William Caton/Acting Secretary
Federal Comm. Comm.
1919 M. St., N.W./Room 222
Washington D.C. 20554

Comm. Rachelle Chong
Federal Comm. Comm.
1919 M. St., N.W./Room 844
Washington D.C. 20554

Dennis Friedman
Mayer, Brown & Platt
190 S. LaSalle St.
Chicago, Illinois 60603

James M. Tennant/President
Low Tech Designs, Inc.
1204 Savillo St.
Georgetown, SC 29440

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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of Jurisdiction of Low Tech Designs,) No. 97-163
Inc.'s Petition for Arbitration with)
Ameritech Illinois Before the Illinois)
Commerce Commission)

RESPONSE OF THE ILLINOIS COMMERCE COMMISSION

NOW COMES the Illinois Commerce Commission, by and through its attorneys, and for its response to the petition of Low Tech Designs, Inc. ("LTD"), for assumption of jurisdiction of its petition for arbitration with Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") before the Illinois Commerce Commission, states as follows:

PROCEDURAL BACKGROUND

On January 30, 1997, LTD filed a Petition for Arbitration to Establish an Interconnection Agreement ("petition") with Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech"). The Petition stated that LTD initially intends to enter the local exchange market under the resale provisions of the Telecommunications Act of 1996 (the "1996 Act"). LTD's petition also states that it intends to offer enhanced call processing services by utilizing unbundled network elements. Apparently, LTD intends to offer enhanced call processing services by obtaining access to Ameritech's Advanced Intelligent Network ("AIN") and by interconnecting LTD's software with Ameritech's AIN.

The petition set forth seven issues for arbitration. Six issues related to access to and interconnection with AIN. The seventh issue related to the ILEC's duty under the 1996 Act to negotiate in good faith. See LTD Petition, pp. 14-19, ¶¶ A.-G. The Illinois Commerce Commission struck those portions of the petition related to issue seven, the ILEC's duty to negotiate in good faith. No relief is sought from this Commission with respect to that decision.

On February 24, 1997, Ameritech filed its response to LTD's petition; as well as a motion to deny the petition. In its motion to deny the petition, Ameritech essentially asserted that in order to avail itself of the arbitration provisions of §252 of the 1996 Act, LTD must be a "telecommunications carrier" as defined under §3(49) of the 1996 Act. 47 U.S.C. § 3(49). Ameritech also asserted that LTD's petition was not a request for interconnection, access to unbundled network elements, resale, or any other matter which can properly be arbitrated under the 1996 Act. The Illinois Commerce Commission found that LTD was not a telecommunications carrier as that phrase is defined in the 1996 Act, and denied LTD's petition. The Illinois Commerce Commission did not address the other issues raised in Ameritech's motion to deny the petition. It is from the Illinois Commerce Commission's granting of the motion to deny the petition for which LTD seeks relief from the Commission under §252(e)(5) of the 1996 Act.

ARGUMENT

LTD asserts that the Illinois Commerce Commission was wrong when it denied its petition for arbitration on the basis of its conclusion as a matter of law that LTD is not a telecommunications carrier as that phrase is used in §§251 and 252 of the 1996

Act. From this disagreement on a question of law, LTD asserts that the Illinois Commerce Commission "failed to act," as that phrase is used in §252(e)(5) of the 1996 Act. LTD concludes that this Commission should assume jurisdiction over its arbitration with Ameritech pursuant to §252(e)(5) of the 1996 Act.

The Commission has already addressed the question of what constitutes a "failure to act" under §252(e)(5). In the First Report and Order implementing the local competition provisions of the Telecommunications Act of 1996, this Commission stated:

... The Commission will not take an expansive view of what constitutes a state's "failure to act." Instead, the Commission interprets "failure to act" to mean a state's failure to complete its duties in a timely manner. This would limit commission action to instances where a state commission fails to respond, within a reasonable time , to a request for mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(C). The commission will place the burden of proof on parties alleging that the state commission has failed to respond to a request for mediation or arbitration within a reasonable time frame. ...

First Report and Order, In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-325, ¶1285 (FCC August 8, 1996).

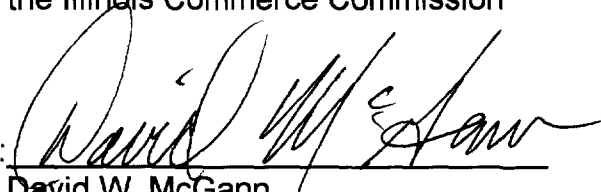
The Commission has clearly stated that in order for LTD to obtain the relief requested, LTD has the burden of demonstrating that the Illinois Commerce Commission "failed to act" under §252(e)(5) of the Act. In addition, this Commission has stated that in order for LTD to meet its burden of demonstrating that the Commission failed to act, LTD must prove to this Commission that the Illinois Commerce Commission failed to respond to LTD's request for arbitration within a reasonable time frame. LTD has not met this burden.

Nowhere in its petition does LTD assert that the Illinois Commerce Commission failed to respond to its petition for arbitration in a timely manner; rather, LTD merely asserts it does not like the response it received. A disagreement with a state commission over an interpretation of the law is not a "failure to act" as that term is used in §252(e)(5). Accordingly, LTD must pursue other avenues of relief in order to redress any perceived wrongs flowing from the Illinois Commerce Commission's decision.

WHEREFORE, the Illinois commerce Commission respectfully requests that LTD's petition be denied.

Respectfully submitted,
the Illinois Commerce Commission

by:

A handwritten signature in black ink, appearing to read "David W. McGann", written over a horizontal line.

David W. McGann
Special Assistant Attorney General

Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877